

REMARKS/ARGUMENTS

Claims 1-18 are pending in the application. Claims 1, 4, 8-11, and 14-18 are amended.

Claim 13 is canceled.

Claims 1, 11, and 14 are amended to recite flanges of the top track and top plate that only extend downward and flanges of the bottom track and bottom plate that only extend upward. Support for such amendments may be found throughout the specification and figures, and specifically in Applicants' specification paragraphs [0028] and [0029].

Claim 4 is amended to clarify the placement of thermal framing components between adjacent studs. Support for such amendments may be found in Applicants' specification paragraph [0026] and FIGS. 1 and 4-6.

Claims 10, 17, and 18 include an editorial change to the preamble.

Claim 11 is further amended, and claims 9 and 16 are amended, to recite features of the thermal framing component, including that the tab are planar, the directions of bending of the planar tabs, and the relative longitudinal positions of the planar tabs. Support for such amendments may be found in Applicants' specification at paragraphs [0031] through [0034] and FIGS. 1 and 3-6.

Claims 8, 15, and 17 are amended for clarity.

Claim Objections

In response to the Examiner's objections, claim 8 is amended to change "thermal component" to "thermal framing component" and claim 9 is amended to delete a repeated word "the." Applicants respectfully request withdrawal of the objections.

Claim Rejections – 35 USC § 112

The Examiner rejected claims 4 and 6 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants' regard as their invention.

The Examiner found claim 4 to be indefinite based on the phrase "a plurality of thermal framing components interposed between the studs." Applicants respectfully submit that the amendments to claim 4 overcome this rejection by clarifying that at least one thermal framing component is interposed between adjacent studs, with a plurality of thermal framing components in the system.

The preamble of dependent claim 16 was amended to refer to the method of assembling a thermal wall system of claim 15 rather than to an apparatus, overcoming the Examiner's rejection based on being a hybrid claim.

Applicants' respectfully request that the rejections of claims 4 and 16 be withdrawn.

Claim Rejections – 35 USC § 102

The Examiner rejected independent claim 13 as being anticipated by US Patent No. 1,867,329 to Ryan. Claim 13 is canceled.

Claim Rejections – 35 USC § 103

The Examiner rejected claims 1 and 2 under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 4,361,994 to Carver ("Carver").

Carver is directed to a structural support for an interior wall partition assembly. Carver

discloses a stud anchoring member 70 including side walls 71, 72 and an interconnecting wall 73. See Carver at col. 4, lines 59-64 and FIGS. 3 and 25. The side walls 71, 72 include portions that extend upward and downward, and the stud anchoring member 70 is shaped substantially like an "H." The lower portions of the side walls 71, 72 and the interconnecting wall 73, or the lower half of the "H," receive an anchoring vertical stud 50. See FIG. 25. The upper edges of the side walls 71, 72 each include an integral locking portion 74, 75 that is adapted to releasably engage locking projections on inner flanges of a support (36a in FIG. 3; 36e in FIG. 25). The support is generally U-shaped with two inner flanges 47, 48 with locking projections between two outer flanges 43, 44 that all extend downward, and two spacing projections 60, 61 on the inside of the support at the edges of the outside portions. The interconnecting wall 73 is spaced from the horizontal top portion of the support 36e. The support 36e extends horizontally away from the side walls 71, 72 in both directions to accommodate wallboard panels 38, 39 to form a wall with two sides.

Applicants' independent claim 1, as amended, recites flanges of the top track and top plate that only extend downward, and flanges of the bottom track and bottom plate that only extend upward. Further, as it is permitted by the orientation of the flanges, amended claim 1 recites that the webs and first flanges of the top track and plate, and the bottom track and bottom plate, are respectively in close and complementary registration. "Close and complementary registration" is described in Applicants' specification as follows: "The webs 48, 54 and interior flanges 50, 56 are substantially nested with each other, and therefore may be considered to be in close and complementary registration." Applicants' specification paragraph [0028]. Carver discloses no such structure, but rather has the "H" shaped stud anchoring member 70 with the upper half of the "H" extending upward to support the support 36e (Carver FIG. 25). The upper

half of the “H” having side walls 71, 72 that extend upward causes the interconnecting wall 73 and the support 36e horizontal surface to be separated from each other; they are not in close and complementary registration as recited in amended claim 1.

Carver says of FIG. 25: “FIG. 25 illustrates the manner in which the structural support may be utilized to form the upper or finishing rail in a partitioning assembly of less than full room height.” Carver col. 6, lines 41-44. Applicants contend that the design disclosed in Carver is not load bearing; though Carver refers to the disclosed elements as providing structural support, Applicants submit that this is support for the wallboard in an interior wall partition assembly, not for vertical support of loads above the stud anchoring member 70 and support 36e. See, for example, Carver col. 1, lines 31-33. The upper portions of Carver’s side walls 71, 72 (the top half of the “H”) have the potential to deflect outward if a load is applied; the lower portions also have the potential to do the same. Contrary to Carver’s design, the close and complementary registration of the webs of the top track and top plate allows the surfaces of the respective webs to bear against each other. Likewise, the close and complementary registration of the webs of the bottom track and bottom plate allows the surfaces of these respective webs to bear against each other, and a load bearing wall is made possible, though not a requirement.

Therefore, Carver does not teach or suggest a structure that includes any of a top track and top plate including flanges that only extend downward, a bottom track and bottom plate including flanges that only extend upward, a top track and top plate including webs that are in close and complementary registration, or a bottom track and bottom plate including webs that are in close and complementary registration. Such teachings or suggestions of the claimed structure are required to establish *prima facie* obviousness. See MPEP § 2143.03. Accordingly, there is no *prima facie* obviousness, and Applicant’s amended claim 1 is nonobvious over Carver.

The Examiner rejected claims 3-5, 7, 9, 11, and 14-16 under 35 U.S.C. § 103(a) as being unpatentable over Carver in view of US Patent No. 1,074,242 to Caldwell ("Caldwell").

Caldwell discloses a "metal structure" that serves the function of a structure, stud, or joist. See Caldwell col. 1, lines 31-33. The metal structure of Caldwell is primarily structural framing to take the place of wood studs and joists or to support a wall. See Caldwell col. 1, lines 12-23. Plaster boards 2 or equivalent are held in place with the metal structure, which have angled flanges 3 and bendable tangs 4. See Caldwell col. 1, line 52 to col. 2, line 66 and FIG. 2. As shown in Caldwell FIG. 2, each flange has an opposing flange across from it, such that at any given position along the longitudinal axis of the metal structure the cross-sectional shape is a "U." The paired flanges of Caldwell are not readily accessible from a single side; direct access to any flange from across the metal structure is impeded by a corresponding flange.

First, independent claims 11 and 14 as amended are nonobvious over Carver and Caldwell for the same reasons amended claim 1 is nonobvious over Carver, namely that neither cited reference teaches or suggests a structure that includes any of a top track and top plate including flanges that only extend downward, a bottom track and bottom plate including flanges that only extend upward, a top track and top plate including webs that are in close and complementary registration, or a bottom track and bottom plate including webs that are in close and complementary registration. Such teachings or suggestions of the claimed structure are required to establish *prima facie* obviousness. See MPEP § 2143.03. Accordingly, there is no *prima facie* obviousness, and Applicant's amended claims 11 and 14 are nonobvious over Carver in view of Caldwell.

Second, independent claim 11 as amended, and amended dependent claims 9 and 16, recite thermal framing components not taught or disclosed by either cited reference. These

claims recite planar tabs that effectively form a “Z” shape or inverted “Z” shape in cross-section. The recitals of these claims result in alternating planar tabs, in that that the first planar tab extends in one direction and the second planar tab, longitudinally adjacent to the first planar tab, and third planar tab, in longitudinal registration with the first planar tab, extend in an opposite direction. “Bending such tabs in opposite directions provides clear, open access to the surface of the tab that is to be attached to a framing member.” Applicant’s specification at paragraph [0032]. Carver and Caldwell disclose no such structure. Amended claim 11 further recites a fourth planar tab in longitudinal registration with the second planar tab, also not taught or suggested in Carver or Caldwell.

Thus, a “Z” or inverted “Z” shape results from the amended claims 9, 11, and 16 recited configuration of the tabs. This is distinct from the wall supporting studs and structure of Caldwell.

Claims 9, 11, and 16 are also amended to recite that the tabs are planar. Planar tabs allow mounting to the front surface of framing members with screws, nails, or other fasteners through the tabs and the front surface of the framing members. This also makes it possible for the thermal framing component to be moved laterally when attached to horizontal top and bottom plates. Such movement allows placement of the thermal framing components at locations determined by the vertical edge of a sheet of insulation, not necessarily at a vertical stud.

Accordingly, as the references neither individually or in combination teach or suggest the elements of claims 9, 11, 14, and 16, there is no *prima facie* case of obviousness, and these claims are nonobvious over Carver in view of Caldwell.

The Examiner rejected claims 8 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Carver in view of Caldwell and further in view of US Patent Application Publication

2001/0004820 to Poliquin. The Examiner also rejected claims 10, 12, and 18 as being unpatentable over Carver in view of Caldwell and further in view of Ryan. The Examiner also rejected claims 3 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Carver in view of Caldwell and further in view of US Patent No. 4,435,936 to Rutkowski.

Dependent claims 2-10 depend either directly or indirectly from independent amended claim 1. Claim 12 depends from amended independent claim 11. Claims 15-18 depend directly or indirectly from claim 14. Because of those dependencies, these claims contain all of the features of their base independent claim, which is in each case allowable. Therefore, such claims are submitted to be patentably distinguishable over the cited references. In addition, these dependent claims all recite features not taught or suggested individually or in combination by any of the cited references.

CONCLUSION

For the foregoing reasons, the Applicant respectfully submits that the claims of Applicants' application are neither anticipated nor fairly taught or suggested by the cited references. Reconsideration and withdrawal of the rejection of claims 1-12 and 14-18 at an early date are respectfully requested.

If the Examiner has any questions about the present Amendment or anticipates finally rejecting any claim of the present application, a telephone interview is requested.

Respectfully submitted,

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